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CLEARINGHOUSE RULE 97-158

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

a. The rule is replete with references to institution policies and procedures and to guidelines and manuals; they are too numerous to treat individually. In some cases, it is quite appropriate to leave internal management issues to individual institutions. For example, the times when meals will be served or visitation will be allowed are local matters that may need to be determined with regard to local resources and situations. However, on the other end of the spectrum, Clearinghouse Rule 97-158 provides that privacy rights and certain conduct rules are left to institutional policies and procedures. Along with the problem that there is little indication of where and how the policies and procedures can be obtained, it is probable that some, if not many, of the policies and procedures can, and should, be imposed uniformly by the department through the rule-making process. [See ss. 227.01 (13) and 227.10, Stats.] The department should review carefully the delegation of authority to local institutions to determine whether those delegations are site specific or whether there are substantive matters that can be applied system wide through the rule-making process.

b. Section DOC 371.03 (19) defines the term “juvenile parole” in part to mean “the aftercare supervision status of a youth, as used in s. 938.34 (4n).” However, that statutory provision, and ch. 938 as a whole, do not use the term “parole” to refer to aftercare status, but rather use the term “aftercare supervision.” Under what statutory authority does the department propose to substitute different terminology for this status than that used in the statute governing the status? To avoid confusion with other uses of the word “parole” in the statutes, as well as to preserve consistency between statutes and their corresponding administrative rules, all references to “parole” or “juvenile parole” in department rules pertaining to juveniles should be changed to

refer instead to “aftercare supervision.” Item 4. of the analysis to ch. DOC 371 provides in part that:

The term “juvenile parole” is used in preference to “aftercare,” the comparable term in the previous rule. The department believes that in common usage, the term “aftercare” primarily implies rehabilitative functions, while the term “parole” better expresses the equally-important functions of assuring public safety, holding youth accountable and building youth skills.

Clearly, the department disagrees with the Legislature’s use of the term “aftercare” and with the connotation of the term. The appropriate method to effect a change in this term and the policy that it expresses is to convince the Legislature to amend the relevant statutes.

c. Section DOC 383.04 (4) (a) should provide that the consent of a youth who is 14 years of age or older is also needed before psychotropic medications may be administered.

d. Section DOC 383.04 (4) (b) should indicate that the Department of Corrections (DOC) may petition the court to permit the institution to administer psychotropic medication only if a youth who is 14 years of age or older wishes to be administered the medication.

e. It is not clear that DOC has the authority to continue medication under s. DOC 383.04 (4) (e) without the consent of the parent or guardian of the youth and the youth, if the youth is 14 years of age or older.

f. Given the specificity of s. 938.505 (2), Stats., the department should clearly explain its authority to treat a youth with psychotropic medications in the absence of consent as described in s. 938.505 (2), Stats.

g. Under what specific statutory authority may a provider or superintendent implement drug testing of a youth who is not subject to court-ordered drug testing, as is permitted under s. DOC 392.04 (3) (a) and (b)?

2. Form, Style and Placement in Administrative Code

a. Each SECTION of the rule should have a separate number rather than being numbered SECTION 1.

b. The analyses to each of the rule chapters refer to current rules with “HSS” prefixes that these proposed rules are replacing. However, it appears that nothing in this rule repeals those current rules. If the department’s intent is to replace those rules, they should be repealed. SECTION 9126 (23) (e) of 1995 Wisconsin Act 27 continued those rules in effect until repealed by DOC.

c. In the table of contents, the titles for ss. DOC 371.12, 371.15 and 371.16 do not match the titles contained in the body of the rule.

d. Section DOC 371.03 (39) should precede sub. (38).

e. In the treatment clause for ch. DOC 373, “DOC” should be inserted.

f. Section DOC 373.03 (25) defines “staff” as a state employe of the institution where a youth is housed. However, some provisions in ch. DOC 373 refer to “staff member” (see, e.g., s. DOC 373.03 (2) (c)), while other provisions in ch. DOC 373 refer to “staff” (see, e.g., s. DOC 373.03 (4)). The defined term should be used throughout the chapter.

However, because use of the defined term “staff” may be awkward in some provisions in ch. DOC 373, e.g., in s. DOC 373.31, it may be more appropriate to indicate in s. DOC 373.03 (25) that “‘staff’ or ‘staff member’ means”

g. In s. DOC 373.03 (6) (a), the term “subchapter VI” should be changed to “subch. VI.” [See s. 1.07 (2), Manual.]

h. In s. DOC 373.03 (9), the word “two” should be written in numerals. [See s. 1.01 (5), Manual.] This comment also applies to s. DOC 373.18 (1).

i. Section DOC 373.03 (18) refers to “s. 373.81 (3), this chapter.” References to provisions in ch. DOC 373 should follow the form outlined in s. 1.07 (2), Manual. For example, a reference to “s. 373.81 (3), this chapter” should be changed to “s. DOC 373.81 (3).”

This comment also applies to ss. DOC 373.03 (21), 373.05, 373.11 (5), 373.27 (1) (a), 373.29, 373.66 (intro.), (1) and (2) (intro.), (a) and (b), 373.67 (1) (intro.), 373.68 (7) and (10) (e), 373.72 (intro.) and (3), 373.76 (1), 373.79 (1), 373.80 (2) and 373.82 (2) (c).

j. Section DOC 373.03 (24) indicates that the “act . . . must demonstrate” The word “must” should be changed to “shall.” [See s. 1.01 (2), Manual.]

k. Section DOC 373.03 (26) refers to a “type I secured correctional facility.” However, the defined term “institution” could be substituted.

l. Section DOC 373.55 (3) should begin: “In this section, “bodily fluids or secretions” include”

m. In s. DOC 373.72 (7), “chapter” should be changed to “ch.” [See s. 1.07 (2), Manual.]

n. In s. DOC 373.80 (3), items 1. to 3. are paragraphs and should be designated as pars. (a) to (c). [See s. 1.03 (4), Manual.]

o. In s. DOC 374.02, the phrase “, within the meaning of s. 938.02 (19), Stats.” is unnecessary and should be deleted, since the term “type 1 secured correctional facilities,” to which it refers, is a defined term.

p. Section DOC 374.03 (intro.) states that the definitions in chs. DOC 371 and 373 apply to ch. DOC 374. This provision lists and defines a number of terms, some of which are duplicative of those found in one or both of the other chapters. For example, the term “institution” is defined in both chs. DOC 371 and 373, yet a definition of that term is also

included in s. DOC 374.03 (5). If the department wishes to retain the reference to the definitions in chs. DOC 371 and 373, it should remove from s. DOC 374.03 any definitions of terms defined in either of the other chapters. However, if the department wants to include definitions of some of those terms in ch. DOC 374, it should eliminate the language making the definitions in chs. DOC 371 and 373 applicable to ch. DOC 374 and instead simply define every desired term in s. DOC 374.03. If the decision is made to continue to refer to the definitions in chs. DOC 371 and 373, the entire list of definitions in s. DOC 374.03 should be reviewed and any duplicative definitions removed from the section.

However, the department should consider creating a definitions chapter to precede the other chapters. This would eliminate the need to define the same term in a number of, if not all, chapters. It will also make amending definitions easier in the future since they would have to be amended in only one place. For an example of a definitions chapter, see ch. HFS 101.

q. In s. DOC 374.10 (1), the phrase “within the meaning of s. DOC 373.03 (3) and (19)” is unnecessary and should be deleted, since the terms “close confinement” and “modified confinement,” to which the phrase refers, are defined terms in this chapter.

r. In item 8. of the analysis of ch. DOC 376, the notation “.07” should be replaced by a reference to “336.07.” See, also, item 11. of the analysis of ch. DOC 376 and items 15. and 16. of the analysis of ch. DOC 373. Also, in item 8., the reference to s. DOC 376.05 is missing a subsection reference.

s. In the table of contents to ch. DOC 376, the titles for ss. DOC 376.01 and 376.02 do match the titles in the body of the rule.

t. Section DOC 376.03 should begin with an introduction that reads: “In this chapter:”.

u. In s. DOC 376.03 (3), the last sentence is substantive and should be placed outside of the definition section.

v. In s. DOC 376.06 (8), the phrase “are not authorized by this section to” should be replaced by the phrase “may not.”

w. In s. DOC 376.07 (3) (c), the phrase “s. 376.06 (3) of this chapter” should be replaced by a reference to “s. DOC 376.06.”

x. In s. DOC 376.08 (5) (intro.), the word “through” should be replaced by the word “to.”

y. In s. DOC 376.13 (1) (a) 6., the cross-reference should read “s. DOC 376.10 or 376.11.”

z. In s. DOC 376.13 (4), the first word appears to be a title. If so, it should be deleted since the remaining subsections do not contain titles.

aa. In s. DOC 376.13 (7), “~~a~~” should not be stricken.

ab. Section DOC 376.16 (1) and (2) should be rewritten to include the information contained in the titles. Titles are not part of the substance of the rule, but subs. (1) and (2) are meaningless without them. [See s. 1.05 (3) (a), Manual.]

ac. In s. DOC 376.20 (1), the introduction should read: “In this section, a “disturbance” means any of the following:”. Also, in sub. (1) (e), the phrase “the above” should be replaced by a cross-reference. Also, in this section, references to “rules of the department” should be replaced by appropriate cross-references. Finally, in sub. (5), the word “through” should be replaced by the word “to.”

ad. In s. DOC 376.21 (1) (intro.), the phrase “An emergency is” should be replaced by the phrase “In this section, “emergency” means.”

ae. Two of the section titles listed at the beginning of the rule do not correspond precisely to the titles used in the text of the rule sections. The problem occurs with respect to ss. DOC 379.12 and 379.18. Titles should be listed exactly as they appear in the rule text.

af. For consistency with other DOC juvenile corrections rule chapters, it is suggested that the first section of this rule be s. DOC 379.01, **Authority and purpose**, and the second section should be s. DOC 379.02, **Applicability**.

ag. In s. DOC 379.02, the introduction should read: “In this chapter:”.

ah. The introductory material in s. DOC 379.03 (2) should be renumbered as par. (a). The remaining paragraphs and internal cross-references should be renumbered accordingly. Unless introductory material grammatically leads into following subunits, the introduction should be separately numbered. The entire rule should be reviewed for this problem.

ai. In s. DOC 379.05 (2) (intro.), it appears that the phrase “any of the following occur” should be inserted before the colon.

aj. In s. DOC 379.13 (1) and (2), the acronyms should be spelled out.

ak. In s. DOC 379.18 (7) (a), it is unnecessary to further subdivide the material in that paragraph into subdivisions. The language in subs. 1. to 4. should make up the text of par. (a).

al. In s. DOC 379.19, subsection titles are used inconsistently. No titles are given for subs. (1) to (4), while subs. (5) and (6) have titles. Section 1.05 (1), Manual, states that if any subsection of a particular rule section is titled, then all of the subsections in that section should be titled. [See also s. DOC 380.06 (2).]

am. Section DOC 393.03 (1) and (2) should be in reverse order because definitions are to be arranged alphabetically. [See s. 1.01 (7) (a), Manual.] This comment applies to other chapters also. For example, see s. DOC 396.03 (1) and (2).

an. In s. DOC 393.05 (1) (a), the phrase “shall not” should be changed to “may not.” [See s. 1.01 (2), Manual.] This comment applies also to ss. DOC 393.05 (1) (f) and (j) and 393.15 (10) (a).

ao. In s. DOC 393.05 (4), “Type” should be lower case.

ap. In s. DOC 393.05 (6), the word “five” should be written as a numeral. [See s. 1.01 (5), Manual.]

aq. In the subdivision titles in s. DOC 393.07, the period should immediately follow the last word of the title and should be followed by the single close quote symbol. [See s. 1.05 (2) (e), Manual.]

ar. Section DOC 393.07 (2) (c) (intro.) begins with a title for a subdivision although it is not a subdivision. The title should either be deleted or added to the paragraph title.

as. In s. DOC 393.07 (3) (e) 2., the reference to “sub. (3) (a)” should be changed to “par. (a).” [See s. 1.07 (2), Manual.]

at. The entire rule should be reviewed to correct instances of use of the passive voice. If the passive voice is used, it is not clear who has the powers or duties listed. For example, s. DOC 393.09 (4) (intro.) should specify who must send the documents. Also see s. DOC 393.11 (2) and (3) (b) and (c).

au. In s. DOC 393.09 (8), it is inappropriate to label the first entry as par. (a) because there are no other paragraphs. [See s. 1.03 (intro.), Manual.]

av. In the title of s. DOC 393.13 (2) (c), the word “Closed” should not be capitalized. [See s. 1.05 (2) (d), Manual.]

aw. In s. DOC 393.15 (10) (b), the reference to “sub. (a)” should be changed to “par. (a).” [See s. 1.03 (4), Manual.]

ax. The words “type 2” should be inserted in the table of contents listing for s. DOC 396.04 to reflect the title in the text.

ay. In s. DOC 396.03 (21), (39) and (40), only the first word of the defined term should be capitalized.

az. Paragraph (b) of s. DOC 396.04 (1) is not consistent with the introduction which refers to “(a) youth who meets all of the following criteria” Paragraph (b) refers to “An appropriate type 2 secured correctional facility placement is available,” rather than a youth criteria. It is suggested that the introduction be rewritten as follows: “A youth may be considered . . . if all of the following apply:”.

ba. In s. DOC 396.07 (1), the terms defined in pars. (c) and (d) should precede pars. (a) and (b) so that they are in alphabetical order.

bb. In s. DOC 396.15 (1) (intro.), “In this section:” should be added at the end. This phrase should then be removed from pars. (a) and (b).

bc. To achieve consistency with other provisions, the phrase “Avoidance of” in s. DOC 398.04 (5) (e) 1. should be changed to “Avoiding.”

bd. The upper-case section reference to s. 938.363, Stats., in s. DOC 398.07 (2) should be made lower case.

be. In s. DOC 398.04 (4) (c) 1. c., “(AODA)” should be deleted.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. DOC 371.03 (10), “within the meaning of s. 938.53, Stats.” should be deleted because s. 938.53, Stats., only provides that a juvenile must be discharged when it is no longer necessary for DOC to retain supervision but does not define “discharge.”

b. In s. DOC 371.03 (19), should “1993” be inserted before “Stats.” in the citation to s. 48.366 (5) (b)? This comment also applies to subs. (34) and (36).

c. In s. DOC 371.06 (2) (a), “(4)” should be deleted from the citation because there is no sub. (4) in that section.

d. In s. DOC 371.07 (2), it would be helpful to insert “under s. DOC 371.10” at the end of the sentence.

e. In s. DOC 371.12 (3) (b), “sub. 1” should be replaced with “sub. (1).”

f. In s. DOC 371.13 (1), the comma after “1993” should be deleted.

g. In s. DOC 371.21 (5), it would be helpful to replace “by statute” with “under s. 938.538 (4) (a), Stats.”

h. Item 3. of the analysis to ch. DOC 373 indicates that “‘sexual contact’ is defined in proposed s. DOC 373.16, offenses against bodily security, since this is the section of the rule where the term is used.” However, the term is not defined in that section. Moreover, that section is not entitled “offenses against bodily security.” Thus, the analysis is incorrect and should be changed to state that “sexual contact” is “described” in s. DOC 373.16.

i. The last sentence of item 15. of the analysis to ch. DOC 373 indicates that the “provisions of ch. DOC 373 are similar to those in s. HSS 333.67 and .68.” A cross-reference to a more specific provision of ch. DOC 373 should be used.

j. Section DOC 373.01 (intro.) states that various statutes, including s. 938.48 (16), Stats., provide statutory authority for ch. DOC 373. However, s. 938.48 (16), Stats., is not referred to in statutory authority reference that precedes the analysis. The statutes should be cited either in both places or neither.

k. Many citations to provisions in ch. DOC 373 are incorrect. For the most part, they seem to be off by one section number. Since numerous instances of this error occur throughout the chapter, all references in the chapter should be checked. For example, s. DOC 373.03 (18) should refer to s. DOC 373.80 (3), rather than to s. DOC 373.81 (3). Also, s. DOC 373.03 (21) should refer to s. DOC 373.68, rather than to s. DOC 373.69. Other instances of this error occur in s. DOC 373.11 (4) (a) to (q) and in the table following s. DOC 373.12.

l. Sections DOC 373.68 (11) and 373.72 (7) indicate that any contraband related to the incident shall be disposed of in accordance with ch. DOC 376, while s. DOC 373.73 (5) indicates that any contraband related to the incident shall be disposed of in accordance with s. DOC 376.17. It would be preferable to use the more specific citation in ss. DOC 373.68 (11) and 373.72 (7) also, rather than simply referring to ch. DOC 376.

m. In s. DOC 374.03 (10), the reference to “1994, Stats.” should be replaced by a reference to “1993 Stats.”

n. In s. DOC 374.05, reference is made to “a hearing under ch. DOC 373.” It would be helpful to include a more specific cite to the hearing provision in ch. DOC 373.

o. In s. DOC 374.10 (4), it is suggested that the phrase “ch. DOC 379” be replaced by the more specific cite “s. DOC 379.06.” Similarly, in s. DOC 374.10 (5), the more specific cite “s. DOC 379.03” should replace the reference to “ch. DOC 379.” Finally, in s. DOC 374.10 (8), the more specific reference “s. DOC 379.18 (7)” should replace the less specific “ch. DOC 379.” The entire rule should be reviewed for the use of more precise citations.

p. Section DOC 375.03 (11) defines the term “mental health facility” as an institution for the mentally ill “as referred to in s. 938.52 (2) (a), Stats.” Rather than citing a statutory provision which merely refers to mental health facilities, the definition should cite a statutory provision (or provisions) which defines or describes such facilities. Note that if the term “mental health facility” is properly defined here, it will be unnecessary to cite statutory provisions pertinent to those facilities, as is currently done in s. DOC 375.04 (3) (c).

q. In s. DOC 375.04 (3) (c), “sub.” on line 1 should be changed to “par.”

r. In s. DOC 376.02, it appears that ss. 48.366, 1993 Stats., 938.183 and 973.013 (3m) should be included to reflect all of the youth who may be under the supervision of DOC in a type 1 secured correctional facility.

s. In s. DOC 376.03 (27), the reference to “1994 Stats.” should be to “1993 Stats.”

t. In s. DOC 376.07 (3) (c), “par. (b) 1 to 7” should be replaced with “par. (b) 1. to 6.”

u. In s. DOC 376.07 (6), “subs.” should be replaced with “sub.”

v. In s. DOC 376.09 (1) (L), “(I)” should be replaced with “(L).” Also, “if requested under s. 938.51 (1), Stats.” should be inserted. If the victim has not requested notification, DOC has no way of notifying him or her.

w. In item 6. of the rule analysis to ch. DOC 379, on the last line, the “(I)” should be changed to “(i).”

x. In the last sentence of item 19. of the analysis to ch. DOC 379, the notation “par.” should be replaced by the notation “sub.”

y. In s. DOC 379.02 (6), it is suggested that a statutory citation be provided for juvenile aftercare as well as for type 2 secured correctional facility supervision.

z. In s. DOC 379.02 (19), “(8) (d)” should be changed to “(8d).”

aa. In s. DOC 379.03 (3) (intro.), the occurrences of the phrase “listed below” should be replaced by appropriate cross-references.

ab. Section DOC 379.09 (8) pertains to disposal of a youth's personal property in various circumstances. Paragraph (e) of that provision states that items received at an institution but not approved shall be disposed of consistent with s. DOC 379.03 (4). That subsection pertains only to restrictions on a youth's incoming and outgoing correspondence. Is that the intended cite?

ac. Section DOC 379.10 (4) pertains to permitting a youth to possess approved religious property required by the youth's religion "in accordance with this chapter." What specific provisions of this chapter are being referred to?

ad. In item 5. of the analysis to ch. DOC 380, the notation "subs." on line 9 should be changed to "pars."

ae. In item 16. of the analysis to ch. DOC 380, the abbreviation "(intro.)" should be inserted after the rule citation on line 4.

af. In s. DOC 380.02 (2), a more specific citation should be given to the location of language on procedures used by hearing officers under ch. DOC 373.

ag. In s. DOC 380.04 (2) (a), the phrase "in s. DOC 380.07" should replace the phrase "of this chapter."

ah. In s. DOC 380.06 (2) (intro.), a citation should be added after "officers" on line 2, to indicate the specific provision in ch. DOC 373 relating to procedures used by hearing officers.

ai. In item 5. of the analysis to ch. DOC 381, the individual use of the notation "sub." should be replaced by the notation "par."

aj. In s. DOC 381.02, does the chapter also apply to youth under an order of the court under s. 48.366, 1993 Stats.? Also, do these provisions apply to youth under the jurisdiction of a court who are placed in a juvenile correctional facility?

ak. In s. DOC 381.03 (13), should "1993" be inserted after "s. 48.366,"?

al. In s. DOC 381.05 (1) (a), it appears that the correct citation is to s. DOC 381.04 (2).

am. In s. DOC 381.05 (4), the cite to s. 946.42 (3), Stats., should include par. (d) to include juveniles confined pursuant to an order under s. 48.366, 1993 Stats. This comment also applies to s. DOC 381.06 (4).

an. In s. DOC 381.06 (3), the notation "DOC" should be inserted after the notation "ch."

ao. In s. DOC 381.06 (6), it may be helpful to include a cite to provisions of ch. DOC 371 relating to the procedures for releasing a youth to juvenile parole.

ap. In s. DOC 383.03 (14), "1994" should be replaced with "1993."

aq. In s. DOC 383.04 (2) (a), "(" should be inserted after "(a".

ar. In s. DOC 383.04 (4) (c), it would be helpful to insert a reference to par. (b) after "hearing on the petition."

as. In s. DOC 383.05 (2) (b), the phrase “, this chapter” should be deleted.

at. In s. DOC 392.03 (1), the reference to s. DOC 373.47 (1) should be changed to read “373.46 (1).”

au. In s. DOC 392.03 (4), it is suggested that the phrase “as defined in s. 961.01 (4), Stats.” be inserted after “controlled substance” and that the phrase “as defined in s. 961.01 (4m), Stats.” be inserted after “controlled substance analog.” Also, it is suggested that the word “alcoholic” be changed to “alcohol” and the phrase “as defined in s. 125.02 (1), Stats.” be inserted after the phrase “alcohol beverage.” Finally, is it necessary to include the phrase “or any form of alcohol”? If so, how is “alcohol” to be defined?

av. In s. DOC 392.03 (13), the reference to “ch. 441, Stats.” should be replaced by the citation “s. 441.06, Stats.”

aw. In the statutes interpreted provision that immediately precedes the analysis to ch. DOC 393, it appears that a reference to s. 938.357 (4g), Stats., also should be added as it relates, in part, to the conditions under which a juvenile’s aftercare status may be revoked.

ax. The last sentence of item 4. of the analysis to ch. DOC 393 indicates that “Section DOC 343.04 (3) adds provisions requiring reasonable accommodations and interpreter services if needed by a youth.” This citation should be to s. DOC 393.04 (3), rather than s. DOC 343.04 (3). Moreover, s. DOC 393.04 (4), rather than s. DOC 393.04 (3), deals with interpreter services and should also be cited.

ay. In the last sentence of item 10. of the analysis to ch. DOC 393, the reference to s. DOC 393.07 (2) (c) 4. should be to s. DOC 393.07 (2) (d), relating to extended court jurisdiction. Other cross-references in item 10. of the analysis to provisions in s. DOC 393.07 (2) (c) are incorrect and should be reviewed.

az. In s. DOC 393.09 (1) (intro.), the reference to s. DOC 393.07 (2) (c) 2. is incorrect. It appears that the reference should be to s. DOC 393.07 (3) (c).

ba. In s. DOC 393.11 (3) (c), is the reference to s. DOC 393.09 (5) correct? It appears that it should be s. DOC 393.09 (4).

bb. In s. DOC 394.03 (14), the notation “Stats.” should be inserted after the statutory reference. [See also s. DOC 394.08 (1) (intro.).]

bc. In s. DOC 394.04 (1), a child caring institution (CCI) seeking designation as a type 2 CCI must obtain approval to operate a type 2 CCI by the Department of Health and Family Services (DHFS). Is there a process for such approval set forth, for example, in administrative rules of that department? If so, a citation should be provided to the location of rules setting forth the process for approval.

bd. In s. DOC 394.05 (1), the phrase “ch. DOC 394” should be replaced by the phrase “the provisions of this chapter.”

be. In s. DOC 394.05 (4), the phrase “this chapter” should be deleted.

bf. In s. DOC 394.06 (3), the phrase “ch. DOC 394” should be replaced by the phrase “this chapter.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Should s. DOC 371.02 also refer to youth who are placed under supervision of DOC by a court?

b. Section DOC 371.03 (1) should define “Assessment and evaluation” or “A&E” because the full phrase and the abbreviation are both used in the chapter. Also, should the definition include a reference to a type 2 correctional facility?

c. In s. DOC 371.03 (3), the statutes listed should be listed in numerical order.

d. In s. DOC 371.03 (4), “an alternate case, including placement in” should be inserted before “a child caring institution.” [See s. 938.538 (3) (a) 1p., Stats.]

e. Section DOC 371.03 (14) should simply state that an extension extends a juvenile’s dispositional order. Also, “juvenile” should be replaced with “youth.” Also, “referred to ss. 938.355 (4) and” should be replaced with “provided under s.”. Section 938.355 (4), Stats., refers the reader to s. 938.365, Stats., but does not explain what an extension is.

f. Section DOC 371.03 (15) should be deleted. It does not add anything to the section on those assessments.

g. In s. DOC 371.03 (17), the membership of the Joint Planning and Review Committee (JPRC) is not specified. See item 11. of the analysis. Also, the department should consider whether JPRC is a governmental body under s. 19.82 (1), Stats., for purposes of the Open Meetings Law.

h. In s. DOC 371.03 (20), it may be clearer to replace “that provides” with “designated to provide” since the juvenile parole provider may have responsibilities relating to the youth before actually supervising the youth.

i. In s. DOC 371.03 (21), “over a youth” could be added to the end of the sentence.

j. It is unclear what the definition in s. DOC 371.03 (22) defines. It would be more helpful to delete the definition and make clear what must be completed during A&E in the substantive provisions of the chapter.

k. Section DOC 371.03 (29) does not define a status. Also, the colon should be deleted.

l. In s. DOC 371.03 (30), “a process” should be replaced with “an instrument.”

m. In s. DOC 371.05 (2) (c), perhaps the first part of the first sentence could be replaced with “If a youth has special language or developmental needs” This is the language used in s. DOC 371.18 (5).

- n. In s. DOC 371.06 (2) (a) to (d), “, written” or “, completed” should be deleted.
- o. In s. DOC 371.07 (2), it seems that the first sentence would be more appropriately placed elsewhere because this section focuses on what the juvenile parole provider must do.
- p. In s. DOC 371.07 (3) (a), “not covered” should be replaced with “which is not included.” Also, a phrase such as “information relating to” should be inserted before “family attitude” in the first part of the second sentence. Later in that sentence, “family reintegration potential” should be replaced with “the youth’s potential for reintegration into the family.”
- q. In s. DOC 371.07 (3) (b), “reintegration potential” should be replaced with “potential for reintegration into the family.”
- r. In s. DOC 371.07 (3) (c), the word “institution” should be replaced by the phrase “secured correctional facility.”
- s. In s. DOC 371.08 (1), “write” should be replaced with “prepare.”
- t. In s. DOC 371.08 (2) (intro.), “staff shall complete a” should be inserted before “comprehensive assessment” and “includes” should be replaced with “that includes completing.” In addition, “law enforcement, court and social service” should be inserted before “records” and par. (b) should be deleted.
- u. In s. DOC 371.10 (1), it is unclear what “risk assessment scores” are and how they are calculated.
- v. In s. DOC 371.10 (2), should the notice include notice that the person may make recommendations at the conference?
- w. In s. DOC 371.10 (3) (a) to (d), “OJOR” should be replaced with “The OJOR representative.”
- x. In s. DOC 371.10 (3) (b), “, if present,” should be inserted after “parents or legal guardian” since they may not be present if the youth is over 18 years of age.
- y. In s. DOC 371.10 (3) (d) (intro.), does the reference to “the facts of the case” mean the facts of the incident that resulted in a delinquency adjudication or criminal conviction or something else? Also, in the last sentence, should “shall” be replaced with “may” or will all of the considerations be included in every recommendation? Finally, it appears that “considerations” should be deleted from the last sentence.
- z. In s. DOC 371.10 (3) (d) 1., the subdivision could be combined with the subdivision paragraphs to read: “Placement of the youth in a type 1 or type 2 secured correctional facility or under juvenile parole supervision in the youth’s home, an independent living arrangement or an alternate care facility.” This would be clearer and would avoid creating subdivision paragraphs. [See s. 1.03 (6), Manual.]
- aa. In s. DOC 371.10 (4) (b) 1., a hyphen should be inserted after “Short.”

ab. In s. DOC 371.10 (5) (a), it appears that “Types of decisions” in the title should be replaced with “OJOR decisions.” Also, “the return of a youth to court for an extension of supervision” should be replaced with “requests to the court for extension of supervision.”

ac. In s. DOC 371.10 (5) (b), it appears that the title should be “Type 1 or type 2 secured correctional facility decisions”. Also, “institution” should be replaced with “type 1 or type 2 correctional facility” because “institution” means a type 1 correctional facility. Also, it is unclear what a “program assignment” is.

ad. In s. DOC 371.10 (5) (c), it is unclear what a “department order” is. Also, “the” should be inserted before “parents.”

ae. In s. DOC 371.10 (6), what result occurs if the administrator does not issue a final decision within 10 days of receipt of request for review?

af. In s. DOC 371.11 (1), on what basis may OJOR assign youth to, or transfer youth from, type 1 and 2 secured correctional facilities?

ag. In s. DOC 371.11 (3), it is unclear why youth described under sub. (2) cannot be transferred to an adult institution, especially since the statutes relating to the serious juvenile offender program contemplates that these juveniles will be transferred to an adult institution upon reaching age 17. Also, what if there are no available beds in the Racine facility and a serious juvenile offender turns 17? Perhaps sub. (2) is drafted too broadly.

ah. Section DOC 371.12 describes the procedures that must be followed in evaluating a youth’s progress to determine whether the youth should stay in his or her current placement or whether other action should be taken. However, nothing in the section discusses what criteria should be considered in making these decisions. It would be helpful to include such criteria in the rules to provide guidance.

ai. In s. DOC 371.12 (1) (intro.), it appears that the second sentence could be deleted. What is the difference between a formal conference and an informal review?

aj. In s. DOC 371.12 (3) (intro.), it is unclear what constitutes a “completed action needed request form.” This should be clarified. In addition, it appears that the quotation marks are in the wrong place.

ak. In s. DOC 371.12 (3) (c), why may an institution social worker or juvenile parole provider propose action based upon the request of a youth or a youth’s parent or guardian only if there has been a significant change in circumstances, but otherwise may propose action at any time, with no restrictions?

al. In s. DOC 371.12 (4) (b), it appears that more than one review may be conducted between Office of Juvenile Offender Review (OJOR) reviews. Is the intent for the JPRC members to have summaries of all reviews that have been conducted since the last OJOR review?

am. In s. DOC 371.12 (5) (a), it appears that the second sentence should be moved to sub. (4).

an. In s. DOC 371.12 (5) (b), it appears that the second sentence should be placed in a separate paragraph.

ao. In s. DOC 371.13 (2), “with this chapter. The” should be replaced with “with this chapter, except that the.”

ap. In s. DOC 371.13 (5), “discharged” should be deleted.

aq. Section DOC 371.13 (7) seems out of place. It would be more appropriate to include such a provision in material relating to parole.

ar. In s. DOC 371.15 (2), the word “must” should be replaced by the word “shall.”

as. In s. DOC 371.15 (4) (b), “or legal guardian” should be inserted after “parents.”

at. In s. DOC 371.16 (1) (a), it may be clearer to combine the paragraphs to read “. . . submit the plan to the members of JPRC 120 days after the date on which the youth is placed in an institution or a secured child caring institution or within 30 days after the date on which the department requests the parole plan, whichever is earlier.” Alternatively, “Not later than” could be deleted from subd. 1.

au. In s. DOC 371.16 (2) (intro.), “of the potential” should be inserted before “for future delinquent or criminal activity.”

av. In s. DOC 371.16 (2) (a), “supervisory contacts” should be replaced with “contacts with the youth’s parole agent.”

aw. In s. DOC 371.16 (2) (c), “athe” should be replaced with “to the.”

ax. Section DOC 371.16 (2) (e) should be rewritten to read: “A recommendation for placement upon release and the rationale for that placement.”

ay. In s. DOC 371.16 (2) (h), “term of commitment” could be replaced with “dispositional order.”

az. In s. DOC 371.18 (1), “legal” should be inserted before “guardian” in the last sentence.

ba. In s. DOC 371.20 (1) (e), “extended jurisdiction commitments” should be replaced with “youth committed under extended jurisdiction.”

bb. In s. DOC 371.21 (3), the use of the word “status” in the first sentence seems inappropriate. Perhaps, “progress” would be better even though it is somewhat redundant. Also, in the last sentence, “legal” should be inserted before “guardian.”

bc. In s. DOC 371.21 (5) (a), does “institution” mean type 1 secured correctional facility in this context? If not, another word should be used. Also, the phrase “is responsible for making” should be replaced by the phrase “shall make.”

bd. What is the relationship between the transferring authority in s. DOC 371.21 (5) (a) and s. DOC 371.15 (1)?

be. In s. DOC 373.01 (4) (e), a comma should be inserted before “Stats.”

bf. In s. DOC 373.03 (1), the word “designee” should be modified by inserting “that person’s” immediately prior to the word “designee.”

bg. Section DOC 373.03 (2) (b) refers to “posted institution policies and procedures,” whereas other provisions in ch. DOC 373, such as s. DOC 373.03 (6) (e) and (f), refer to “posted policies and procedures.” One term should be selected and used consistently in ch. DOC 373.

bh. Section DOC 373.03 (4) refers to “an alleged violation by a youth.” It would be clearer if the phrase referred to “an alleged violation of a conduct rule by a youth.”

bi. In s. DOC 373.03 (6) (d), “the youth” should be changed to “a youth.” This comment applies also to s. DOC 373.03 (14), (16), (23) and (24). Chapter DOC 373 should be reviewed for improper use of the definite article “the” when an indefinite article should have been used. For example, s. DOC 373.23 (2) (c) refers to “the unauthorized group” but should refer to “an unauthorized group.”

bj. Various provisions in ch. DOC 373, such as s. DOC 373.03 (17) and (20), refer to “disciplinary rules” or “disciplinary rule.” However, most provisions in ch. DOC 373 refer to “conduct rules” or “conduct rule.” Assuming that “disciplinary rule” and “conduct rule” have the same meaning, one term should be selected (“conduct rule” appears to be more appropriate) and used consistently in ch. DOC 373. Also, to be consistent, references to a “rule” (see, e.g., ss. DOC 373.07 (1) (intro.) and 373.08 (1) (intro.)) should be changed to “conduct rule.”

Similarly, most provisions in ch. DOC 373 refer to conduct rule violations. However, some provisions refer to “offenses” (see, e.g., s. DOC 373.08). Assuming that “conduct rule violation” and “offense” have the same meaning, one term should be selected and used consistently in ch. DOC 373.

bk. In s. DOC 373.08 (1) (a), the verbs should be changed to the third person singular, that is, “encourages, directs,”

bl. In s. DOC 373.09 (4) (intro.), “by staff” should be inserted after “order.”

bm. In s. DOC 373.10 (2), the word “a” should be inserted prior to the word “youth.”

bn. In s. DOC 373.11 (4) (p), the word “Harm” should not be capitalized.

bo. In s. DOC 373.13 (8), should the phrase “to protect staff or other youth” be expanded to “to protect staff, other youth or other persons,” inasmuch as volunteers and visitors may also be present?

bp. In s. DOC 373.16, the incomplete sentence which begins “In this section,” should be deleted.

bq. Section DOC 373.31 (3) indicates that a youth may not “[b]uy, **rent** or borrow anything from, or sell, **lease** or lend anything to, a staff member or a staff member’s family” (emphasis added). To be consistent, this should be changed to “[b]uy, rent, lease or borrow anything from, or sell, rent, lease or lend anything to, a staff member of a staff member’s family.” Similarly, s. DOC 373.31 (4) should be changed to refer to “buy, rent, lease or borrow.”

br. Section DOC 373.35 makes an exception to the prohibition regarding using a language other than English if English is not a youth’s primary language. Should a similar exception be made regarding using sign language if sign language is the youth’s primary language?

bs. The definition of “steal” in s. DOC 373.40 should be moved to s. DOC 373.39. Also, the period which immediately follows the number of the subsection in s. DOC 373.40 should be deleted, and a period should be inserted at the end of s. DOC 373.39.

bt. In s. DOC 373.47, the phrase “(major offense)” following the title should be deleted. This comment applies also to s. DOC 373.62.

bu. A period should be inserted at the end of s. DOC 373.56 (1).

bv. In s. DOC 373.61, the first “or” should be deleted.

bw. In s. DOC 373.64, the phrase “objectives, program” should be changed to “objectives or program.”

bx. Section DOC 373.65 (3) (intro.) should specify whether all or any of the conditions specified in s. DOC 373.65 (3) (a) and (b) apply.

by. To be consistent with s. DOC 373.68 (10) (b) 2. and 3., s. DOC 373.68 (10) (b) 1. should also be written in the active voice, that is, “Obtain a statement of facts with a recommendation from a staff member.”

bz. Section DOC 373.71 (4) (a), (b) and (c) should each begin with the word “That.”

ca. Section DOC 373.71 (5) refers to both a “disciplinary hearing” and a “formal hearing.” Throughout most of ch. DOC 373, the term “disciplinary hearing” is used. Assuming that a disciplinary hearing and a formal hearing are the same thing, one term should be selected and used consistently.

cb. In s. DOC 373.82 (title), it appears that the word “**Youths**” should be changed to “**Youth**.” Making this change would make this title consistent with the title for this section as listed in the table of contents.

cc. Is s. DOC 373.82 (1) (c) intended to mean that a youth will receive a toothbrush and toothpaste, plus either a comb or a pick? If so, the word “and” should be inserted prior to the word “comb.”

cd. In s. DOC 373.82 (2) (a), the word “is” should be deleted.

ce. In s. DOC 373.83 (1) (intro.), the phrase “all of” should be inserted prior to the phrase “the following.”

cf. In the first sentence of the relating clause to ch. DOC 374, the word “juvenile” should be replaced by the phrase “type 1,” to use terminology consistent with other department rule chapters and related statutes. Similarly, in the first sentence of the rule analysis, the phrase “type 1 secured” should be inserted before “correctional facility,” to correctly refer to the type of facility to which this rule pertains.

cg. Item 3. of the analysis to ch. DOC 374 enumerates four criteria for placing a youth in administrative confinement. In the fourth enumerated criterion, the semicolon after the second occurrence of the word “affiliation” should be deleted. Also in that sentence, reference is made to the youth’s presence in the general population resulting in a riot or disturbance. However, the rule provision to which this item pertains, s. DOC 374.04 (3), only refers to disturbances and not to riots. It appears that the reference to a riot in the analysis should be removed.

ch. Item 4. of the analysis to ch. DOC 374 discusses prehearing placement “in security” consistent with ch. DOC 373 for a youth awaiting a hearing. Is “security” the same as “administrative confinement”? If so, to avoid confusion, it is suggested that the term “administrative confinement” be used, since that is the term used in the rule.

ci. In item 11. of the analysis to ch. DOC 374, the word “allows” in the third sentence should be changed to “allowed.”

cj. In s. DOC 374.01, the word “and” should be inserted before the third statutory citation on line 2. Also, on line 3, the phrase “in type 1 secured correctional facilities” should be inserted after the word “youth,” to clarify to which facilities the rule pertains.

ck. In s. DOC 374.03 (4), the word “disturbance” is defined as having the same meaning given in s. DOC 376.20. The definition of “disturbance” in s. DOC 376.20 is different from the definition of “disturbance” in s. DOC 373.03 (9), which pertains to this chapter, as the rule is currently drafted. It should be clarified which meaning of “disturbance” is intended to be used in ch. DOC 374.

cl. In s. DOC 374.03 (7), it is suggested that the phrase “policy or procedure” be changed to “policies or procedures.”

cm. In s. DOC 374.03 (9), a closing quotation mark should be inserted after the word “facility.”

cn. Sections DOC 374.04 and 374.05 pertain to circumstances in which a youth may be placed in administrative confinement. Section DOC 374.04 lists four reasons why a superintendent may place a youth in administrative confinement. Section DOC 374.05 states a fifth circumstance--the pendency of a hearing under ch. DOC 373--for placing a youth in administrative confinement. Is there a reason why these two sections are not combined? Also, with regard to s. DOC 374.05, it should be clarified who may place a youth in administrative confinement pending a hearing under ch. DOC 373. If the sentence were rewritten in the active voice, it would clarify who is authorized to make the placement. Use of the passive voice is a

recurring problem in this rule. See s. 1.01 (1), Manual, regarding use of the active voice. Also, s. DOC 374.05 states that a youth may be held in close or modified confinement. That would appear to be redundant of language in s. DOC 374.10 (1), which sets forth living conditions in administrative confinement and provides that a youth may be placed in either close confinement or modified confinement. Therefore, it appears unnecessary to repeat that language in s. DOC 374.05.

co. Sections DOC 374.06 (**ACRC procedures**) and 374.07 (**Hearing procedure**) both pertain to the hearing which the ACRC holds regarding the decision to place a youth in administrative confinement. There is considerable overlap in subject matter between the two sections and there are both organizational and substantive problems with them.

To improve the organization of the two sections, it is suggested that s. DOC 374.06 be retitled “**ACRC hearing**” and include the material currently in ss. DOC 374.06 and 374.07 (1), (2) and (3). Section DOC 374.07 should be retitled “**ACRC decision**” and include the material currently in s. DOC 374.07 (4).

The following specific problems are noted with the two sections:

- (1) Section DOC 374.06 does not, but should, state up front that when the superintendent decides to place a youth in administrative confinement, ACRC must conduct a hearing on that decision. Further, the provision should indicate whether the hearing must be held prior to actually placing the youth in administrative confinement or whether the placement can be made and the hearing held subsequently.
- (2) Because s. DOC 374.06 (1) (intro.) is drafted in the passive voice, it is unclear who must give a youth written notice of the ACRC hearing. Is it the superintendent, who is authorized to place the youth in administrative confinement under s. DOC 374.04, or ACRC, which will conduct the hearing under s. DOC 374.07?
- (3) It is also unclear within what time period after the decision is made to place a youth in administrative confinement the ACRC hearing must occur and, in addition, the time period within which the youth must receive notice of the proposed hearing.
- (4) It is confusing to have some language about the ACRC hearing in s. DOC 374.06 (2) and other language about the hearing in s. DOC 374.07 (3). Information concerning what occurs at the hearing and what rights the youth has at the hearing should all be in one place, to facilitate a full understanding of the hearing process.
- (5) In s. DOC 374.06 (2) (a), reference is made to the youth’s right to be present at the “review.” Does this mean at the hearing? If so, the word “hearing” should be used. Also, in sub. (2) (e), a youth has the right to assistance of an advocate. The youth should be notified how to obtain an advocate and what the advocate’s role is in assisting the youth.

- (6) Section DOC 374.07 (1), which ostensibly deals with ACRC hearing procedures, does not even mention ACRC nor does it state any purpose for holding a hearing on the decision to place a youth in administrative confinement. The subsection should be rewritten to state that ACRC shall conduct a hearing to determine the appropriateness of placing a youth in administrative confinement (if that is the purpose). Also, this subsection states that a youth may request that the hearing be delayed for additional preparation time and that a reasonable amount of time shall be granted unless there are good reasons for not doing so. Subsection (2) then states that the ACRC chair may extend the time limit upon written request of the youth for good cause. Is this a different extension than the one the youth may request for additional preparation time under sub. (1)? It is confusing to have two provisions on extending the time for the hearing upon request of the youth. These provisions should be reviewed and clarified.
- (7) Section DOC 374.07 (3) (a) states that, at the hearing, the reason for placing a youth in administrative confinement “shall be read aloud.” The sentence should be rewritten in the active voice to indicate who is responsible for stating the reasons for placing the youth in administrative confinement.
- (8) Section DOC 374.07 (3) (d) states that ACRC may permit the youth to ask direct questions of witnesses or may require the youth or his or her advocate to submit questions to ACRC to be asked of the witnesses. Will the youth and his or her advocate, if any, be informed in advance whether they will be able to ask direct questions or whether they will be required to submit questions to ACRC in order to give them time to prepare those questions? Also, the wording of this paragraph is awkward, as it does not indicate who is permitted to ask direct questions. The phrase “the youth or the youth’s advocate, if any, to ask” should be inserted after the word “permit.” Also, the phrase “of the witnesses” should be inserted after the word “questions.”
- (9) In s. DOC 374.07 (3) (f), there is a reference to ACRC indicating a particular fact “in the record.” However, there is no indication of what type of record must be kept of the ACRC hearing. Is the hearing manually or electronically recorded? Are the proceedings transcribed in some way after the hearing?
- (10) Section DOC 374.07 (4) delineates a number of actions that must occur after the ACRC hearing. This language is not appropriately placed in a section dealing with procedures to be followed at the hearing. As suggested previously, the language should be moved to a new section governing post-hearing requirements. Also, in sub. (4) (b), there is a typographical error in the acronym “APRC.” Also in that paragraph, does the ACRC recommend the length of time the youth should spend in administrative confinement? In par. (d), the record is to be “shared” with the youth. Does the youth receive his or her own copy of the record to keep?
- (11) The language in s. DOC 374.07 (5) pertains to a youth appealing an ACRC decision to the superintendent. As with the material in sub. (4), this

language does not belong in a section dealing with procedures at the ACRC hearing. This material should be in a separate section dealing just with appeal of the ACRC original decision.

cp. In s. DOC 374.08, the phrase “the decision” should be inserted after the word “remand” on line 2.

cq. There should be a separate section dealing with review of the ACRC decision by: (1) the superintendent; and (2) ACRC, as well as appeals of those reviews. This would combine language currently in ss. DOC 374.08 and 374.09.

cr. The first sentence of s. DOC 374.09 should be rewritten in the active voice, to indicate that ACRC shall review a youth’s administrative confinement at least every seven days. Also, in this provision, could the staff member referenced on line 6 be the youth’s advocate or would it automatically be someone else?

cs. In s. DOC 374.10 (2) and (7), the term “security level placement” is used. What is the definition of that term?

ct. Section DOC 374.10 (3) refers to allowing property in a youth’s room that is consistent with the property limits for the assigned area, as well as with s. DOC 379.09. Where would the property limits for the assigned area be set forth to inform the youth of those limits?

cu. In item 9. of the analysis to ch. DOC 375, the word “in” should be inserted after the word “stay” in the second line.

cv. In s. DOC 375.03 (19), it appears that the definition of “staff” should refer to a person employed at an institution, rather than just employed by the department.

cw. In s. DOC 375.03 (22), the comma following “1993” should be deleted.

cx. In s. DOC 375.04 (1), what is meant by observation being an “involuntary or voluntary” nonpunitive status? Is there any difference between the two types of observation in terms of what happens to the youth in each status? Also, when is a youth voluntarily in observation status in this chapter?

cy. In s. DOC 375.04 (3) (a) 1., the word “was” on line 1 should be changed to “is.”

cz. In s. DOC 375.04 (3) (a) 2., the word “and” on line 2 should be changed to “or.”

da. In s. DOC 375.04 (3) (b), must the parents or guardian of a youth under age 18 consent in writing to the transfer of their child to a mental health facility? Also, who within the department must approve initiating the voluntary transfer?

db. In s. DOC 375.04 (3) (c), if consent under par. (b) is not obtained, a physician or psychologist may recommend involuntary transfer to the superintendent. Presumably, the superintendent then makes the decision whether to transfer the youth to a mental health facility. Rewriting the last sentence of this provision in the active voice would clarify that the superintendent may transfer the youth to a mental health facility.

dc. In s. DOC 375.04 (3) (d), who must document the youth's treatment needs? Who must promptly transfer the youth to an appropriate medical facility? As with the previous comment, if the active voice were used, it would be obvious who is responsible for taking each of these actions.

dd. It appears that the material in s. DOC 375.04 (4), relating to recommending that a youth be placed in observation, should be moved up to sub. (2), which deals with placing a youth in observation. In merging the two provisions, it should be made clear that while any staff member may recommend that a youth be placed in observation, only those persons specified in sub. (2) are authorized to actually place the youth in observation. Also, with regard to sub. (4), it should be clarified to whom a staff member may recommend that a youth be placed in observation.

de. In the title to s. DOC 375.05, it is suggested that the word "status" be changed to "observation." Also, how quickly must the superintendent inform the administrator if a youth is kept in observation beyond 14 days? Finally, does the requirement that the administrator review the need for observation at least every seven days begin once the youth has been kept in observation for a 15th day or beyond or does it begin on the date on which the administrator is notified that the youth is being held beyond 14 days?

df. Section DOC 375.06 (1) governs the situation in which a physician or psychologist determines that observation must continue beyond 14 days and transfer to a mental health facility has been initiated. What happens in a situation in which a physician or psychologist determines that observation must continue beyond 14 days but transfer proceedings have not yet been initiated? Also, in this provision, the phrase "transfer proceedings have been initiated" should be in the active voice to state who initiates them.

dg. In s. DOC 375.06 (2) (d), a psychologist or physician may decide not to disclose in the notice sources of information relied upon. If the sources are not disclosed, must the notice state that that information is being withheld?

dh. Section DOC 375.06 (4) (e) refers to not including certain information in "a written record" and noting the omission of items in "the record." It would be helpful to include information on the type of record made in a review of the need for continued observation.

di. Section DOC 375.06 (5) states that a youth must remain in observation if the person conducting the review to determine the need for continued observation determines that the youth is mentally ill and dangerous. However, the subsection does not indicate what is to happen to the youth if the person conducting the review determines that the youth is not mentally ill and dangerous.

dj. Section DOC 375.06 (6) states that the superintendent must require a review of the need for continued confinement at least once every 21 days after issuance of the decision to keep a youth in observation. It states that observation status may not exceed 60 days unless an extension is granted. Is the 60 days counted from the first day on which the youth was initially placed in observation status or is it counted from the day on which the decision is made to keep the youth in observation. Also, the rule should clarify what is meant by the "reviews required by this section" which are to be conducted during an extension granted by the administrator.

dk. Section DOC 375.08 (4) refers to documenting a youth's progress in treatment while in observation. Where is information set forth on requirements relating to treatment of a youth while in observation?

dl. In s. DOC 375.10, pars. (a) to (d) should be changed to subs. (1) to (4). Also, for consistency, the phrase "shall have the right to appeal" in what is currently labeled pars. (b) and (c), should be changed to "may appeal" for consistency with language in the provision currently labeled par. (a).

dm. In the analysis to ch. DOC 376, in item 7., in the third line, "treat" should be replaced with "threat."

dn. In s. DOC 376.03 (4), the comma after "limited" near the end of the first sentence should be moved to follow "to." Also, the subsection provides that X rays may be used to detect the use of intoxicating substances. It seems that X rays would only be helpful to determine whether a person possesses contraband.

do. In s. 376.03 (5), the acronyms for the specific chemical agents should not follow the names in parentheses. [See s. 1.01 (8), Manual.] Instead, the drafter should: (1) delete the acronyms and use the full names of the agents in the text of the rule; (2) replace, for example, "chloracetophenone (CN)" with "chloracetophenone" or "CN"; or (3) define the acronyms.

dp. In s. DOC 376.03 (4), "of" should be inserted after "per day."

dq. In s. DOC 376.03 (14), the definition should indicate that a lockdown restricts the movement of the entire institution population.

dr. In s. DOC 376.03 (21), the reference to "modified confinement" should be deleted because this is the only use of the phrase in the chapter.

ds. Section DOC 376.04 (5) (a) provides that youth in voluntary confinement must have the privileges and property that are at least equivalent to those permitted for youth in security status. However, since sub. (4) provides that these youth are in close confinement, under the definition of "security status," they already are in security status. Clarification is needed and appropriate citations would be useful.

dt. In s. DOC 376.05 (5), it appears that OJOR should be listed as an entity that may use information, as listed in the beginning of the subsection, instead of as a purpose in using the information.

du. Section DOC 376.06 sets forth the steps which staff must take in attempting to apprehend a runaway youth, but does not set forth such steps for use of force in other circumstances. It would be helpful to include more guidance for a broader range of potential situations.

dv. In s. DOC 376.06 (5), the word "runaway" is used. Item 11. of the analysis, however, provides that DOC uses "escape" instead of "runaway."

dw. In s. DOC 376.06, it is not clear that staff is required to submit a report regarding the use of deadly force.

dx. In s. DOC 376.07 (8) (b) 2., it would be helpful to insert “A description of” at the beginning of the sentence.

dy. In reading s. DOC 376.08 (2) (intro.) and (3) together, it is unclear who has the authority to order a youth to be placed in restraints.

dz. In s. DOC 376.08 (2) (b), “confinement status” should be replaced with “security status.”

ea. In s. DOC 376.08 (5) (d), it is unclear what a “licensed clinician” is.

eb. In s. DOC 376.08 (10), in the second sentence, “by a psychologist, psychiatrist or the crisis intervention worker” should follow “An examination.”

ec. In s. DOC 376.08 (11), it would be helpful to cite s. 51.35 (3), Stats., to clarify what the criteria for such a transfer are.

ed. In s. DOC 376.09 (1) (d), it would be helpful to cite s. 938.51 (1) (a), Stats., to clarify what notification to the community includes.

ee. In s. DOC 376.09 (1) (f), it appears that “physical” could be deleted.

ef. In s. DOC 376.09 (7), the commas should be deleted.

eg. In s. DOC 376.09 (8), it may be clearer to replace “consistent with” with “if permitted under.” Under s. 938.78 (3), Stats., the description of a juvenile may be released only if the juvenile was adjudicated delinquent of one of several specified crimes.

eh. In s. DOC 376.10, “under ss. DOC 376.11 and DOC 376.12 of this chapter” should be deleted. The sentence is clear without the phrase and the phrase is not helpful because it implies that the sections cited describe what the room of a youth is.

ei. In s. DOC 376.11, the second sentence should be rewritten because it is unlikely that advance notice would enhance the staff’s ability to find contraband. It would make more sense to describe when advance notice is not required.

ej. Section DOC 376.12 (2) requires a written report of a search of a youth’s living quarters conducted under the section. Are reports not required for searches conducted pursuant to s. DOC 376.11?

ek. In s. DOC 376.13 (1) (intro.), the introductory sentence should be rewritten. The paragraphs following do not list the types of searches, as the titles are not part of the substance of the rule. Therefore, the introductory sentence should be: “Searches of youth may be conducted as follows:”.

el. In s. DOC 376.13 (1) (d) 5., “conducted on the entire population of the institution” should be deleted or replaced with “conducted on a group of youth selected from the entire population of the institution.”

em. In s. DOC 376.14 (3), “require” should be replaced with “request” since a visitor is permitted to refuse a search. This comment also applies to sub. (4).

en. In s. DOC 376.14 (4), it is unclear who may authorize a personal search and if staff must request authorization from the superintendent and administrator.

eo. In s. DOC 376.14 (7), “shall state” should be replaced with “states.”

ep. In s. DOC 376.15 (1), “The personal search may include the requirement that staff submit” should be replaced with “As part of the personal search, the superintendent may require staff to submit”

eq. In s. DOC 376.16 (intro.), the titles of the subsections should be deleted and rewritten into the text of the rule.

er. In s. DOC 376.17 (1), it is not clear what the “written report” in the second sentence must contain or whether it is a reference to a report required under a different section.

es. In s. DOC 376.17 (2), it is not clear what a “conduct report” is. Are these reports described in another chapter?

et. In s. DOC 376.17 (3) (a), it would be helpful to insert “Except as otherwise provided in this subsection,” at the beginning of the sentence.

eu. Section DOC 376.19 should require notice of a lockdown to the secretary and the administrator in circumstances under which advance notice cannot be given.

ev. In s. DOC 376.21 (3) (c), “and” should be replaced with “or.”

ew. The first sentence of the rule analysis to ch. DOC 379 is quite convoluted. It states that the rule provides a process for defining resources in relationship to living conditions which govern the quality of daily life for youth in a type 1 secured correctional facility. However, the rule does not contain a process for defining resources; rather, it sets forth a variety of resources and activities available to youths under the supervision of the department in a type 1 secured correctional facility. It is suggested that language along those lines be used in place of the language currently in the first sentence. It is also suggested that the word “defined” in the second sentence of the analysis be changed to “designed.” It is noted that this chapter was titled “**Living conditions**” when it was a Department of Health and Social Services rule. That title seems to better capture the range of subjects covered by the rule.

ex. In s. DOC 379.02 (9), following the notation “Stats.,” a comma should be deleted.

ey. In s. DOC 379.02 (27), the notation “1994, Stats.” should be replaced by the notation “1993 Stats.”

ez. Item 16. of the analysis states that s. DOC 379.15 (3) adds the word “prescribed” to a list pertaining to youth clothing, to permit the division’s institutions to require uniform dress for youth. However, the word does not appear in the text of the rule. The two provisions should be reconciled. Also, a period should be inserted at the end of the last sentence of item 16.

fa. Section DOC 379.02 (3) refers to a person employed by a “county department” to provide community supervision of a youth. No definition is provided for “county department.” Either a definition of “county department” should be included in this rule or statutory citations to the county departments being referred to should be inserted in this provision.

fb. In s. DOC 379.02 (4), it is suggested that the end of the sentence be rewritten to read: “one hour of out-of-room time per day.”

fc. Section DOC 379.02 (7) (a) refers to items which a youth may not knowingly possess under s. DOC 373.03 (6), including smoking materials, tobacco products, smoking paraphernalia, money, toxicants, drug paraphernalia and weapons. This makes it sound as if those items are delineated in s. DOC 373.03 (6), when in fact they are not. Also, what is the difference between “smoking materials” and “smoking paraphernalia”? Finally, it is noted that this definition of “contraband” differs from that set forth in s. DOC 373.03 (6). It is confusing to have different definitions of the same term in different juvenile corrections rules chapters. The two definitions of “contraband” should be reviewed and a consistent one utilized in all chapters.

fd. There is an extra comma after the word “Stats.” in s. DOC 379.02 (9).

fe. In s. DOC 379.02 (12), the term “original design bed capacity” is used in par. (a), while the term “bed capacity” is used in par. (b). Are these two phrases intended to refer to the same bed capacity? If so, consistent terminology should be used to avoid confusion. If the two terms are different, they should both be defined. Also, in par. (b), should the word “availability” on line 3 be changed to “unavailability”?

ff. In s. DOC 379.02 (23), a comma should be inserted after the word “institution” on line 2.

fg. Section DOC 379.03 (1) states that a youth may communicate with various delineated persons, consistent with program needs and the need to protect the public. That language appears to be repeated unnecessarily in sub. (2) (c), which states that a youth may be permitted correspondence that is consistent with the youth’s program needs and public safety.

fh. In s. DOC 379.03 (2) (e), must the department obtain written approval from the parents? Also, other department rules refer to obtaining permission from a youth’s parent or guardian. Should a guardian be included here?

fi. In s. DOC 379.03 (4) (a), how will inspecting incoming, outgoing and returned mail verify the sender?

fj. In s. DOC 379.03 (4) (b), is the intent of the first sentence only to inspect mail sent by youth and not by adults? Also, what does the phrase “addressed from a youth” mean? Is it a youth in the institution, outside the institution or both? It might help clarify requirements to separate language regarding outgoing mail from that pertaining to incoming mail. Also, in this provision, what is meant by the “alleged offense” on line 7?

fk. In s. DOC 379.03 (4) (c), why is the provision restricted to mail processed through the U.S. Postal Service?

fl. In s. DOC 379.03 (4) (d), the phrase “to see” on line 2 should be changed to “and determine.”

fm. In s. DOC 379.03 (4) (e) 9., the word “includes” on line 3 should be changed to “does.” Also, it is noted that the list of sexual conduct in s. 944.21 (2) (e), Stats., contains additional items to those set forth in subd. 9. b. Were those other items meant to be included in the rule?

fn. In s. DOC 379.03 (4) (f), it is suggested that the word “receiver” be replaced by the word “recipient.”

fo. In s. DOC 379.03 (4) (f) 1., the word “was” on line 3 should be changed to “is.” Also, does the phrase “in the custody or under the supervision of the department” pertain to both a youth and an adult? If so, the language could be clarified by rewriting the phrase to read: “unless the sender is either a youth or an adult in the custody or under the supervision of the department.” Also, in this provision, is there any time period within which the intended recipient of a letter must be given the written notice that the mail was not delivered? [See also s. DOC 379.03 (4) (f) 2.]

fp. In s. DOC 379.03 (4) (g), what is the difference between a “parcel” and a “package.” Also, does the phrase “a youth” only refer to a youth in the institution or also to one outside the institution?

fq. In s. DOC 379.03 (4) (h), it is suggested that the phrase “United States” be replaced by the word “federal.”

fr. In s. DOC 379.03 (6), are records to be kept only for those items that come into the institution through the mail?

fs. In s. DOC 379.03 (7) and (8), how will it be determined to which “specific person” the suspension of mail privileges pertains? Also, how will it be determined for what “specific period” the suspension will apply?

ft. In s. DOC 379.04 (2), is there or should there be a mechanism for a youth to request the addition of appropriate subscription materials to the list devised by the superintendent? Also, should this subsection include a statement that a youth may not receive a publication that is not on the approved list? Also, in sub. (4), should the youth be given a reason for the failure to deliver a publication under this section?

fu. The following comments pertain to s. DOC 379.05, relating to news media access to youth:

- (1) In sub. (1), it is suggested that the phrase “which include” be changed to “including.”
- (2) In sub. (2) (a), the material in subds. 1. and 2. could be combined with the language in par. (a) (intro.), rather than being further subdivided. To do this, the phrase “any of the following:” would be deleted.

- (3) In sub. (2) (e), are a youth's parents always consulted prior to the interview? If not, how will they know to object to the interview?
- (4) In sub. (3), a citation to the location of rules concerning visitors should be included.

fv. The following comments pertain to s. DOC 379.06, relating to visitation:

- (1) In sub. (2) (b), if the phrase "of each" on line 5 refers to the spouses of all persons listed beginning with the natural parents, it is suggested that the comma following the word "spouse" on line 4 be replaced by the phrase "and from" and the word "each" on line 5 be replaced by the phrase "those persons." Should the definition of the term "close family member" be used somewhere in this provision?
- (2) In sub. (2) (c), does the phrase "the children" on line 2 refer solely to the children of the youth or also to the children of approved visitors?
- (3) Since the material in par. (d) refers to the approved visitor list first mentioned in par. (a), it is suggested that the two provisions be combined. Also, in par. (d), the word "the" on line 2 should be changed to "their."
- (4) Subsection (2) (e) permits but does not require staff to send a questionnaire to a proposed visitor for completion and return to the institution. Is there any recourse for the youth if the staff chooses not to send a questionnaire to a proposed visitor? Should sending the questionnaire be required instead of permitted?
- (5) In sub. (2) (f) 1. and 2., should the requesting youth or proposed visitor be permitted to submit additional information if the information is found to be incomplete?
- (6) In sub. (2) (f) 8., should provision also be made for reasonable grounds to believe that the proposed visitor may victimize, rather than be victimized by, the youth?
- (7) In sub. (2) (f) 9., what is meant by "correctional supervision"? How does this mesh with the inter-institutional visitation permitted under sub. (7)?
- (8) In sub. (2) (g), to which visit does the phrase "the visit" on line 1 refer? Is it a particular visit or is it all visits by a particular visitor?
- (9) In sub. (2) (g) 4., "or" should be replaced by "and."
- (10) In sub. (2) (h), "for" should be inserted after the word "provision" on line 5. Also, the phrase "be required to" should be deleted.
- (11) Subsection (2) (j) should specify how a youth asks permission to have a visit by a family member not on the approved visiting list.

- (12) In sub. (3) (a) (intro.), the word “create” should be changed to “develop.” In sub. (3) (a) 6., the comma following “United States” should be replaced by the phrase “or of.”
- (13) In sub. (3) (b), would children be required to provide picture identification as well as adults?
- (14) In sub. (3) (c), the phrase “establish specific” should be changed to “develop written.” Also, on line 4, the phrase following the comma should be rewritten to read “and the hours for and the location of visits.”
- (15) In sub. (4), the language relating to visitation for youth in a major penalty status should be combined with the language in sub. (3) (c) regarding such visitation. Also, the title to sub. (4) is misleading, since the provision deals not only with major penalty status but also control status and observation status.
- (16) In sub. (7), the word “or” on line 3 should be deleted.
- (17) In sub. (8), the comma following “United States” should be replaced by “and.”
- (18) In sub. (9) (a) (intro.), it is suggested that the United States be listed before the State of Wisconsin on line 2.
- (19) While the title to sub. (9) refers to both suspension and termination of visiting privileges, subds. 1. and, by extension, 2. pertain only to suspension. More information should be provided about termination of visiting privileges. Also, it is suggested that the language in the first sentence of subd. 2. be rewritten in the active voice to read: “The youth may appeal a decision of the superintendent by filing a complaint”

fw. The following comments pertain to s. DOC 379.08, relating to courts, legal services and legal materials:

- (1) In sub. (1), a period should be inserted at the end of the sentence.
- (2) In sub. (2), the word “a” should be inserted after the word “discourage” on line 3 and the word “their” on line 4 should be replaced by the phrase “his or her.”

fx. In s. DOC 379.09 (5), it is unclear why information about what is considered contraband is restated, since the term is defined in s. DOC 379.02 (7). Also, a more specific reference than “this chapter” should be included to indicate how contraband items may be confiscated and disposed of. Also, in sub. (8) (d) 2., where is it otherwise provided by law how property with a value over \$10,000 is to be managed?

fy. In s. DOC 379.09 (8) (a), the phrase “shall have the option of choosing” should be replaced by the phrase “may choose.” Also, in sub. (8) (d) 2., the phrase “over \$10,000 should be replaced by the phrase “of \$10,000 or more.”

fz. The following comments pertain to s. DOC 379.10, relating to religion:

- (1) In sub. (1) (b), the word “a” should be inserted after the word “require” on line 1.
- (2) In sub. (2) (a), does the phrase “that involves others or that affects the youth’s appearance or institution routines” pertain to both a youth who wants to participate in religious practices and a youth that wants to request a change in religious programming, diet, special foods or authorized property?
- (3) In sub. (4), a more specific reference than “this chapter” should be used.

ga. In s. DOC 379.11, the word “the” should be inserted after “in” on line 1.

gb. In s. DOC 379.12, the department has eliminated virtually all of the information contained in former s. HSS 339.16, relating to educational programs to be made available to youth in correctional institutions. In a stated effort to eliminate “all of the verbiage of s. HSS 339.16 on education programs,” the department has left the reader with little to go on in terms of what educational resources are available to youths in type 1 secured correctional facilities. There should be a middle ground in which some explanation is provided as to the range of programs offered, requirements for teachers and staff and requirements for a written plan for each education program developed for a youth. Also, the department should clarify whether an institution could require a youth age 18 or older to enroll in an education program under sub. (3), since that provision refers to a “youth” and does not mention an age limit while sub. (2) only states that an institution shall provide a youth age 18 or older *with an opportunity* to participate in an education program and does not appear to require such participation.

gc. The following comments pertain to s. DOC 379.14, relating to food and liquids:

- (1) In sub. (1), is the food and nutrition board a separate entity from the national academy of sciences-national resource council? If so, the word “the” should be inserted after the comma on line 4 for clarification.
- (2) Subsection (3) requires that the menu for each institution shall be posted in advance of “the meal.” Does this mean a menu must be posted for every meal or could a menu be posted each day or week for all meals to be served that day or week?

gd. The following comments pertain to s. DOC 379.17, relating to living quarters:

- (1) In sub. (1), the term “original design capacity” is used, whereas the term “design capacity” is used in sub. (2). If the two terms refer to the same thing, the same term should be used to avoid confusion. Also, sub. (1) states unequivocally that only the number of youth determined by original design capacity shall be housed in institution living quarters. However, sub. (2) provides that if the secretary declares an institution housing emergency, the number of youths assigned to living quarters may exceed design capacity. Therefore, it is suggested that a phrase be inserted at the beginning of sub. (1) to read: “Except as provided in sub. (2),”.

- (2) Subsection (3) directs the superintendent of an institution to designate the occupancy of each room used for youth residence based on subs. (1) and (2). Does the “original design capacity” designate the maximum number of persons to be housed in a particular room? Also, what does it mean to base the designation on subs. (1) and (2)? Does it mean that the superintendent cannot exceed a particular number of youth per room in the absence of an emergency?

ge. In s. DOC 379.18, it is unnecessary to have the material in par. (a) appear in four separate subdivisions. The four provisions could be merged as the text of par. (a).

gf. The following comments pertain to s. DOC 379.19, relating to telephone calls:

- (1) In sub. (1), the word “policy” on line 5 should be plural.
- (2) In sub. (3) (intro.), the phrase “one or more” should be replaced by the word “any.”
- (3) In sub. (3) (a), it should be clarified that a call *from* a youth’s attorney, attorney’s assistant or approved law student also may not knowingly be monitored or recorded.
- (4) In sub. (3) (c) 4., from which agencies could an investigating officer come?
- (5) In sub. (5), the word “youth’s” on line 1 should be changed to “his or her.”

gg. In item 6. of the analysis to ch. DOC 380, the last sentence refers to “3 additional days.” The comparable provision in s. DOC 380.04 (1) (g) refers to “2 additional days.” Also, in the last sentence of this item, the notation “DOC” should be inserted after the notation “s.”

gh. In item 9. of the analysis to ch. DOC 380, the word “a” in the third line should be replaced by the word “an.”

gi. Item 16. of the analysis to ch. DOC 380 states that s. HSS 340.07 (6) (a) and (b) are not repeated in s. DOC 380.09 (8) because “state administrative code is not necessary to ensure that the state comply with an applicable federal law or regulation.” First, that language is awkwardly worded and should be rewritten in a more grammatical and readable style. More importantly, it appears that it would be useful to include the cited material from s. HSS 340.07, as it requires including in a report to the administrator specified information required to comply with Title VI of the Civil Rights Act (42 C.F.R. 2000d). This information includes the number of grievances filed per month by minority youths and the number of grievances alleging discrimination on the basis of race, sex, religion or age initiated against individual staff persons and the dispositions. If this requirement is not set forth in administrative rules, how will institution administrators be aware that they are required by federal law to submit this information?

gj. In s. DOC 380.01 (1), the phrase “shall be” on line 3 should be changed to “are.” Also, in sub. (2) (a), it is suggested that the word “policy” be plural.

gk. In s. DOC 380.03 (3), the word “and” on line 2 could be deleted.

gl. The following comments pertain to s. DOC 380.04 (1) (a):

- (1) This provision contains only partial information about complaint procedures a youth must follow. Key information about the complaint system, including that youths must receive information about the system at orientation and that institutions must make complaint forms readily available to youths, is not set forth until s. DOC 380.10, five pages later. The language in s. DOC 380.10 should be incorporated into s. DOC 380.04.
- (2) The word “a” should be inserted after the comma on line 2.
- (3) The rule should explain with which “staff” a youth must discuss problems prior to using the complaint procedure.
- (4) This paragraph refers to filing complaints with “the complaint mediator.” However, no information is provided about complaint mediators until s. DOC 380.09, four pages later. It is suggested that the material currently in s. DOC 380.09 be retitled “**Designation, training and activities of complaint mediators,**” and placed right after s. DOC 380.04, so that the reader is informed earlier on who complaint mediators are and what role they play in the complaint process.

gm. In s. DOC 380.04 (1) (b), it is suggested that the phrase “Youth may file complaints” be changed to “A youth may file a complaint.” Also, is a youth who is challenging the procedure used by a hearing officer under ch. DOC 373, as permitted in s. DOC 380.02 (2), required to file the complaint with the complaint mediator or may the complaint be filed directly with the superintendent?

gn. Section DOC 380.04 (1) (c) states that “staff” must either contact the complaint mediator who must then assist the youth in writing the complaint or “staff” must assist the youth in preparing the written complaint, if the youth so requests. This provision should specify which “staff” are being referred to. Is it the same “staff” referenced in sub. (1) (a), with whom a youth must first discuss problems before using the complaint procedure?

go. Section DOC 380.04 (1) (d) states that a youth must file a complaint “with an institution” within five days from the day on which an incident occurred. It would be more precise to state that the youth must file a complaint with “the complaint mediator or superintendent,” rather than with the more vague “institution.”

gp. In s. DOC 380.04 (1) (f) 3., which requires a youth to indicate what, if any, previous efforts have been made to deal with the issue, should the rule specify that the youth must indicate how he or she has complied with the requirement to first discuss the problem with “staff” as required under sub. (1) (a)?

gq. In s. DOC 380.05 (1) (b), reference is made to “the appropriate form” which the complaint mediator must use to indicate the outcome of a complaint. This appears to be the only

reference to that particular form. Will the department develop this form for complaint mediators?

gr. Section DOC 380.05 (1) (c) should indicate how the complaint mediator is to obtain the approval of the superintendent for an informal resolution. Must the superintendent see the form and approve the resolution in writing? Or, may the mediator obtain oral approval? Also, does this approval come before the youth signs the form indicating that the resolution is satisfactory or after that takes place? Also, this provision should indicate what happens if the supervisor does not approve the informal resolution; namely, that a formal resolution must be sought under sub. (2).

gs. In s. DOC 380.05 (2) (intro.), the phrase “all of the following procedures apply” should be changed to “the mediator shall do all of the following.”

gt. In s. DOC 380.05 (2) (b) and (c), it is suggested that all occurrences of the word “decision” be changed to “resolution,” for consistency with sub. (1). Also, in sub. (2) (c), it is suggested that the word “issue” on line 1 be replaced by the phrase “youth’s complaint.” Also, is the mediator required to use a form on which to state his or her proposed resolution, as is required under sub. (1) (b) for informal resolutions? If so, will the department develop the form?

gu. In s. DOC 380.06 (3) (a), is there a form a youth must use to appeal a decision? If so, the form should be mentioned in this provision and in the provision currently located in s. DOC 380.10 (2) in which institutions are required to make complaint forms readily available to youth.

gv. In s. DOC 380.06 (4), in the last sentence, what is meant by the statement that a complaint decision shall “give notice of this subsection”? Does it mean that the decision must notify the youth that he or she may contact the administrator directly to obtain the relief requested in a complaint? This sentence should specify what notice is to be given in the complaint procedure.

gw. Section DOC 380.06 (4) refers to a contact with the administrator by sealed mail. The provisions of s. DOC 379.03 should be reviewed to ensure that this mail actually remains sealed.

gx. In s. DOC 380.07 (1) (a), must the others with whom a complaint is discussed also keep the identity of the complainant and the subject matter of the complaint confidential?

gy. In s. DOC 380.08 (1), the word “a” should be inserted after “nor” on line 1.

gz. In s. DOC 380.08 (2), the material before the comma should be rewritten in the active voice to read: “A youth may send a complaint alleging breach of confidentiality, abuse or retaliation directly to the superintendent.” Also, this provision should indicate whether the youth is to use a particular form to make the complaint and, if so, whether the department will develop the form. In sub. (3), what happens if the administrator does not act within seven days?

ha. In s. DOC 380.09 (7), the phrase “under sub. (6)” should be inserted after the word “interest” on line 1. On line 3, the word “assigned” should be replaced by the word “alternate.”

hb. In s. DOC 380.09 (9), must the complaint mediator keep the complainant informed of all decisions or nonaction by another person in writing or is it sufficient to inform the complainant of these matters orally?

hc. In s. DOC 380.10, it is suggested that the word “complaint” be inserted after the word “of” in the title. Also, in sub. (1), it is suggested that the word “a” be inserted before each occurrence of the word “youth” on line 3. Also, must the information about complaint policies and procedures “in simplified language” be in writing or may it be oral?

hd. In s. DOC 380.10 (2), the phrase “and appeal” should be inserted after the word “complaint,” if the department intends to make appeal forms available.

he. In s. DOC 381.03 (7), perhaps a term such as “offgrounds leave” could be used instead of “offgrounds,” since “offgrounds” is an adjective.

hf. Section DOC 381.03 (11) should be rewritten. Under this definition, “supervision” means a youth who is under supervision.

hg. Section DOC 381.04 (2) (j) appears to be redundant and could be deleted.

hh. Section DOC 381.05 (1) (a) provides that a superintendent may authorize a furlough or offgrounds, but there is no explanation of how a furlough or offgrounds may be requested.

hi. It appears that s. DOC 381.06 (1) should include a provision that OJOR must impose conditions for the trial visit.

hj. In s. DOC 381.06 (4), “furlough, offgrounds or” should be deleted since the section relates to trial visits only.

hk. In s. DOC 381.06 (5), it would be helpful to specify who in the department may cancel a trial visit.

hl. In s. DOC 383.03 (8) (intro.), it would be clearer to rewrite the introduction to read: “‘Psychotropic therapeutic classification’ means the classification of a psychotropic medication as one of the following:”.

hm. Section DOC 383.04 (1) provides in part that medication may not be administered solely for the purpose of punishment, producing docility or as a substitute for interpersonal communication. Does this sentence mean that medication may be administered to achieve these goals if they are part of a larger purpose?

hn. Section DOC 383.04 (4) (a) should specify that the consent of a parent or guardian is required if the youth is under 18 years of age. Further, it should clarify that the consent of the youth and parent or guardian is required if the youth is between 14 and 18 years of age and the consent of an individual is required if the individual is 18 years of age or older.

ho. In s. DOC 383.04 (4) (d), “with legal custody” should be inserted after “parent” in the first sentence. This comment also applies to the first sentence of par. (e). Also, in par. (d), “. No consent of the parent or guardian is required to change a medication order if” could be replaced with “, unless”.

hp. In s. DOC 383.05 (intro.), “juvenile correctional” should be deleted since “institution” is defined. This comment also applies to “correctional” in s. DOC 383.06 (2) (c) 4.

hq. In s. DOC 383.06 (2) (c), it is unclear what the first sentence means. Does this apply only if the youth refuses administration by a nurse? Also, it appears that a physician assistant should be included in the second sentence.

hr. Section DOC 383.06 (2) (c) 5. should clarify that only a licensed psychologist or physician may recommend transfer to a state treatment facility.

hs. In the definition of “drug test” in s. DOC 392.03 (5), it is stated that a drug test includes a test for the presence of alcohol. Is this statement necessary, in light of the fact that “drug” is defined in s. DOC 392.03 (4) to include “any alcoholic beverage or any form of alcohol”?

ht. In s. DOC 392.03 (8) and in other places in the rule, the capital letters beginning second or subsequent words of a defined term should be in lower case.

hu. In s. DOC 392.03 (12), the word “a” should be inserted after the word “that” on line 3 and the word “have” on line 4 should be changed to “has.”

hv. The wording of the definition of “supervisor” in s. DOC 392.03 (18) is confusing as currently written. It appears that the third occurrence of “or” on line 2 should be replaced by “, a” and that on line 3, the word “a” should be inserted after the first occurrence of “or” and the word “supervision” should be deleted. Also in this definition, what is the difference between being responsible for the “supervision” and being responsible for the “administration” of the various delineated items? Are both terms necessary?

hw. In s. DOC 392.04 (1), the word “a” should be inserted after the word “of” on line 2.

hx. In s. DOC 392.04 (2) (a), is it the department’s intent that a youth would not be required to submit to all three types of drug tests--scheduled, random and for cause tests? Use of the word “or” on line 4 means that the youth could either be required to receive scheduled drug tests and random drug tests, on the one hand, or for cause drug tests on the other, but not both. If that is not the department’s intent, the sentence should be rewritten. Also, should the department indicate when for cause drug testing is appropriate? If it is stated elsewhere in the rule, the provision should be cited here.

hy. Section DOC 392.05 (1) provides that “staff” may conduct or authorize a body contents search to collect a specimen. The term “staff” is defined in s. DOC 392.03 (15) as provider staff who have responsibility to supervise a youth’s placement and behavior. Is that type of staff person necessarily qualified to perform a body contents search? Should this authorization be given to qualified staff or staff with medical training, for example?

hz. In s. DOC 392.05 (3), the word “physicians” should be replaced by the word “physician’s.”

ia. In s. DOC 392.06 (1), it is unclear who may give drug test results to staff, because the sentence is written in the passive voice. This authority should be clarified. Also, it would be

helpful to indicate to what extent providing drug test results to staff is or is not consistent with state and federal law.

ib. In s. DOC 392.06 (2), what specific test steps are required to ensure that drug test results are handled in a confidential manner? Are the requirements of subs. (2) and (3) to be included in providers' contracts?

ic. In s. DOC 392.07 (1), the phrase "be responsible to" on line 2 should be deleted.

id. Item 15. of the analysis apparently describes s. DOC 393.12. Item 15. indicates that the rule "states that change of placement is an option for any juvenile parole provider." However, s. DOC 393.12 simply provides that a juvenile parole provider may petition the court for a change in placement. It appears that in the last sentence of item 15. of the analysis, the phrase "that change" should be changed to "that petitioning for change."

ie. In s. DOC 393.02, "1993, Stats." should be changed to "1993 Stats.,". This comment applies also to s. DOC 393.03 (28).

if. Section DOC 393.03 (3) refers to "juvenile parole or community supervision matters." The definition of "juvenile parole" in s. DOC 393.03 (15) apparently encompasses "community supervision." If this is the case, then the phrase "or community supervision" should be deleted. If this is not the case, ch. DOC 393 should explain what community supervision means.

ig. In s. DOC 393.03 (15), "court ordered" should be hyphenated.

ih. Section DOC 393.04 (intro.) should include language stating that *all* of the subsections apply.

ii. Section DOC 393.04 (8) refers to the "individual youth's needs." Because "youth" is a defined term, the word "individual" should be deleted.

ij. Section DOC 393.05 (1) (intro.) indicates that a youth's agent must inform the youth orally and in writing of the conduct rules imposed by the agent "or" the conditions imposed by the court. If the intention is to require information be provided about both the conduct rules and the court-ordered conditions, then the word "or" should be changed to "and."

ik. Section DOC 393.05 (1) (intro.) indicates that a youth's agent must inform the youth orally "and" in writing of the conduct rules imposed by the agent and then specifies that all of the conduct rules in pars. (a) to (p) apply. However, s. DOC 393.05 (1) (p) (intro.) indicates that the conduct rules issued by the agent under that paragraph may be given either orally "or" in writing. Because s. DOC 393.05 (1) (p) (intro.) provides an exception to the both oral and written requirement of s. DOC 393.05 (1) (intro.), s. DOC 393.05 (1) (intro.) could be prefaced with a clause such as "Except as provided in par. (p),"

However, the provision in s. DOC 393.05 (1) (p) (intro.) allowing conduct rules to be given orally appears to be in conflict with s. DOC 393.05 (3) to (5) which appear to indicate that all conduct rules, including changed or additional conduct rules, be in writing. This apparent conflict should be resolved.

il. Section DOC 393.05 (1) (b) provides that a youth must inform certain people of the “name and department of his or her agent.” Because “department” is a defined term, its use here is inappropriate, and an alternative word such as “agency” should be used.

im. In the first sentence of s. DOC 393.05 (5), a comma should be inserted following the word “youth.” Also, the portion of the sentence which states that the youth shall sign a copy is unclear. It appears that this should state that the youth shall sign a copy of the conduct rules.

in. Section DOC 393.05 (6) requires a supervisor to review an appeal and make a written response within five working days. Unlike various other sections of ch. DOC 393 which specify when a reviewer’s response deadline is to be measured from (see, e.g., s. DOC 393.07 (2) (b) 3. a. and (3) (e) 4., measuring from receipt of the appeal), s. DOC 393.05 (6) does not specify when the response deadline is to be measured from. Was this omission intentional?

io. In the second and third sentences of s. DOC 393.05 (6), in order to be consistent with other provisions in ch. DOC 393, it would be preferable to refer to the “conduct rule,” rather than the “rule.”

ip. Section DOC 393.05 (7) indicates that if a youth disagrees with the supervisor’s decision, the youth may appeal that decision to the next supervisory level of DOC or the county department, which shall issue the final decision. Unlike various other sections of ch. DOC 393 which provide appeal rights and specify a deadline by which the entity appealed to must respond, s. DOC 393.05 (7) does not specify a deadline by which the next supervisory level must issue the final decision. Further, unlike these other sections, s. DOC 393.05 (7) does not specify the effect of a failure to issue a decision. Were these omissions intentional?

iq. Section DOC 393.07 (2) (intro.) indicates that an “agent shall take one of the following actions:”. Thus, the paragraphs in s. DOC 393.07 (2) should list various actions which an agent may take. While s. DOC 393.07 (2) (a) and (b) do so, s. DOC 393.07 (2) (c) (intro.) merely states that DOC or the county department must consider the factors listed in s. DOC 393.07 (2) (c) 1. to 6. prior to initiating revocation proceedings. Section DOC 393.07 (2) (c) should specifically state at the outset the action that the agent may take with respect to revocation proceedings. For example, if the agent is allowed to initiate revocation proceedings, then s. DOC 393.07 (2) (c) should specifically state that: “The agent may initiate revocation proceedings. The agent shall consider the following prior to initiating revocation proceedings:”.

It is unclear what the agent’s role is with respect to initiating revocation proceedings inasmuch as s. DOC 393.07 (2) (c) (intro.) now states that DOC or the county department must consider certain factors prior to initiating revocation proceedings. This implies that it is DOC’s or the county department’s role to initiate revocation proceedings, rather than the agent’s role. If that is the case, is it the agent’s role to recommend that revocation proceedings be initiated? If so, s. DOC 393.07 (2) (c) (intro.) could state that: “The agent may recommend to the department or county department that revocation proceedings be initiated. The department or county department shall consider the following prior to initiating revocation proceedings:”. If the agent has no role in the matter, then s. DOC 393.07 (2) (c) is inappropriately included in the list of actions that the agent may take.

ir. In s. DOC 393.07 (2) (d) 1., the reference to “s. DOC 393.09 through 393.13” should be to “ss. DOC 393.09 to 393.13.”

is. In s. DOC 393.07 (3) (a) 2., a comma should be inserted following “presence.”

it. In s. DOC 393.07 (3) (b), in the phrase “temporary administrative detention,” it appears that the word “temporary” is unnecessary inasmuch as “administrative detention” is a defined term which is, by definition, temporary.

iu. In s. DOC 393.07 (3) (e) 1., a comma should be inserted following the first use of the word “detention.”

iv. In s. DOC 393.07 (3) (e) 3., “any time” should replace “anytime.” See subd. 5.

iw. In s. DOC 393.09 (1) (b), the reference to “special condition” is unclear. According to s. DOC 393.06 (intro.), it appears that a youth may have violated either a conduct rule under s. DOC 393.05 or a court-ordered condition of juvenile parole. Therefore, it appears that s. DOC 393.09 (1) (b) should require a “statement of the conduct rule or court-ordered condition of juvenile parole that the youth allegedly violated.”

ix. The second sentence of s. DOC 393.09 (3) (b) indicates that “[i]f the youth does not have an attorney, a parent, guardian or legal custodian must approve the waiver.” However, rather than requiring a parent, guardian or legal custodian to approve the waiver, it appears more accurate to state: “If a youth who is less than 15 years of age at the time of the waiver does not have an attorney, the juvenile parole provider may not accept a waiver unless the youth’s parent, guardian or legal custodian approves the waiver.” In the third sentence, “may” should replace “shall be permitted to.”

iy. Section DOC 393.09 (4) (f) refers to DOC’s request for administrative action form. It is not clear what this form is.

iz. Unless a decision is made not to use the term “juvenile parole,” then in s. DOC 393.09 (10) (b), the defined term “juvenile parole” should be used, rather than “parole.” This comment applies also to s. DOC 393.10 (3) (e).

ja. Section DOC 393.15 (2) (intro.) should include language stating that *all* of the paragraphs apply.

jb. In s. DOC 393.15 (3) (intro.), the phrase “except any decision regarding the following” should be changed to “except a decision regarding any of the following.”

jc. The first paragraph of the analysis to ch. DOC 394 states that under s. 301.08 (1) (b) 3., Stats., the department is authorized to contract with a public or private agency to provide type 2 secured correctional facility services. That statutory provision also refers to a voluntary agency. Should that type of agency be included in this description?

jd. In the second paragraph of the analysis to ch. DOC 394, the word “correction’s” on line 9 should be changed to “corrections’.”

je. In item 4. of the analysis to ch. DOC 394, on page 3, the word “and” on line 4 should be changed to “as” and the word “the” on line 5 should be deleted.

jf. The definition of “force” in s. DOC 394.03 (7) differs somewhat from the definition of that term in s. DOC 396.03 (16), despite the assertion in item 2. of the analysis that the definitions in this chapter are substantially the same as those in ch. DOC 396, with certain exceptions not including the definition of “force.” The two definitions should be reviewed and reconciled.

jj. In s. DOC 394.03 (11), the phrase “a supervisor” should be changed to “the person.” Also, if the supervisor is responsible “for the operation of” a CCI, is that person in charge of the entire facility? If so, perhaps a different term than “supervisor” should be used to describe the person.

jh. In s. DOC 394.03 (14), the second “the” on line 1 should be changed to “a.”

ji. In s. DOC 394.03 (15), is the phrase “, regardless of age” necessary? It is not mentioned in the cited statutory provision.

jj. Section DOC 394.04 (2) refers to a CCI applying for a designation as a type 2 CCI in a manner specified by the administrator. Should there be a uniform process to apply for this designation set forth in the rule?

jk. In s. DOC 394.05 (2), a period should be inserted at the end of the sentence.

jl. Section DOC 394.06 (3) (b) states that notice of the removal is to be sent to “the juvenile courts and county departments.” Which juvenile court or courts and county department or departments must receive the notice? Is it *all* juvenile courts and county departments in the state?

jm. In s. DOC 394.06 (4), it appears that reference should be made to a type 2 CCI, rather than a CCI. This change should be made throughout the remainder of the rule, except where it is necessary to refer both to a CCI and a type 2 CCI.

jn. Section DOC 394.07 (1) (intro.) requires a county agent and a CCI to notify type 2 status youth at intake of a number of delineated items. Is a county agent always present at intake? Also, who within a CCI must provide the notice?

jo. In s. DOC 394.07 (1) (b), a comma should be inserted at the end of line 1.

jp. In s. DOC 394.07 (2), the phrase “of the items in sub. (1)” should be inserted after the word “notified” on line 2.

jq. In s. DOC 394.08 (1) (intro.), the phrase “shall be considered to have” should replace the word “has” on line 3. Also, on line 4, the word “from” should be inserted after the word “permission.”

jr. In s. DOC 394.08 (5), the word “a” on line 3 should be changed to “the.”

js. In s. DOC 394.09 (4) (b) 5., the comma after the word “force” should be deleted.

jt. In s. DOC 396.01 (1) (a) and (2) (a), “community based” should be hyphenated.

ju. The definition of “administrative detention” in s. DOC 396.03 (2) refers to an “administrative return proceeding.” This term is used elsewhere in the rule, including s. DOC 396.08 (1) (e). Clarity of the rule would be improved if a cross-reference were included in the rule to the statutory or rule provision governing this proceeding.

jv. Subsection (4) of s. DOC 396.05 contains a reference to “case plan.” This reference would be more understandable if the term “case plan” were defined or if a cross-reference was made to a rule provision defining this term.

jw. The second sentence of s. DOC 396.12 (3) which provides that “(s)taff may not use excessive force” appears to be redundant and has the potential to create an ambiguity, rather than adding to the clarity of the first sentence, which specifies: “Only reasonable and the minimum necessary force may be used to achieve control of a youth.”

jx. In s. DOC 396.08 (1) (d), a comma should be inserted after “placement.”

jy. Section DOC 396.11 (2) (intro.) uses the phrase “any program as defined in this chapter.” It is not clear what this term means. Can these programs be specified?

jz. Section DOC 396.14 (3) refers to “chemical products and delivery systems approved by the department.” Will these be specified by rule? Can a cross-reference to the rule be provided here?

ka. The second sentence of s. DOC 396.14 (6) specifies that: “No weapon may be used except as permitted under s. DOC 396.12.” This provision does not add clarity to the first sentence of sub. (6), which provides: “Staff may not carry a firearm or other weapon while on duty.” Further, the reference back to s. DOC 396.12 is not particularly helpful as that section does not specifically deal with the use of weapons. Instead, s. DOC 396.12 describes when various degrees of force may be used to control a youth.

kb. Although the term “reasonable belief” as used in s. DOC 396.15 (3) (a) is a defined term in the rule, the criterion “sufficient cause” in par. (b), which must be applied by a supervisor in approving a strip search, is not defined. Therefore, consideration should be given to authorizing the supervisor to approve the strip search if the supervisor also determines that there is reasonable belief.

kc. In s. DOC 396.15 (4) (d), it is unclear what is meant by “certified medical personnel.” Is this only physicians? Does it include nurses or physician assistants?

kd. In s. DOC 396.05 (1) (b), “of supervisors” should be inserted after “county board.”